

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 1, 2019

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2019 NOV -1 P 1:20

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. SEC-2019-00052

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Retail Franchising Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Act"), §§ 13.1-557 *et seq.* of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act. The Retail Franchising Act Rules are set forth in Chapter 110 of Title 21 of the Virginia Administrative Code, 21 VAC 5-110-10 *et seq.* ("Rules").¹

Proposed Revision to Section 55 of Chapter 110 regarding the Requirements for the Franchise Disclosure Document.

Section 55 of Chapter 110 of the Rules sets forth the requirements for the content and format of a franchisor's Franchise Disclosure Document ("FDD"). Currently under this section, a franchisor's FDD must include one (1) state cover page immediately following the Federal Trade Commission ("FTC") required cover page and 21 VAC 5-110-55 (C) sets forth the content requirements for such a state cover page.

¹ A copy of the Rules may be found at the Commission's website (www.scc.virginia.gov/srf/lawsregs.aspx).

191110052

The proposed amendment to 21 VAC 5-110-55 (C) requires franchisors to include with the FDD three "State Cover Sheets" and a "State Effective Dates Page" in accordance with the requirements of Part III B of the North American Securities Administrators Association, Inc. ("NASAA") 2008 Franchise Registration and Disclosure Guidelines, as adopted in 2019. A copy of the new NASAA State Cover Sheets and State Effective Dates Page requirements, including instructions to franchisors, a sample State Cover Sheet, and a sample State Effective Dates Page, is attached hereto as Exhibit A. A copy of the proposed revised Section 55 of Chapter 110 of the Rules is attached hereto as Exhibit B.

The new three State Cover Sheets requirement includes a page about how to use the FDD, a separate page with general cautionary information about franchising, and a third page to disclose risk factors specific to the franchise being offered. The new State Effective Dates Page is a separate document that includes the date when a franchise registration is made effective in Virginia.²

The Division recommended to the Commission that the proposed revisions should be considered for adoption, with an effective date of January 3, 2020. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division's website: <http://www.scc.virginia.gov/srf/index.aspx>. Any comments on the proposed rules must be received by December 9, 2019.

² Under the current rule, such information is included in the one (1) state cover page.

IT IS THEREFORE ORDERED that:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before December 9, 2019. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2019-00052. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf/index.aspx>. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be provided to the Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY hereof shall be sent to the Director of the Division of Securities and Retail Franchising, who shall forthwith provide notice of this Order via U.S. mail or e-mail a copy of this Order to any interested persons as he may designate.

III. The Franchise Disclosure Document¹

B. *State Cover Sheets and State Effective Dates Page*

1. The Franchise Disclosure Document must include the following State Cover Sheets prepared according to the Instructions following Form G:
 - a. **“How to Use This Franchise Disclosure Document.”**
 - b. **“What You Need to Know About Franchising *Generally*.”**
 - c. **“Special Risk(s) to Consider About *This* Franchise.”**
2. The Franchise Disclosure Document also must include a page titled **“State Effective Dates”** with the following information prepared according to the Instructions following Form G:

State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the states, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below:

State	Effective Date
[State]	[Date or pending]
[State]	[Date or pending]

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

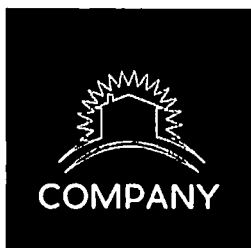
3. A sample of an FTC Cover Page, State Cover Sheets, and State Effective Date Page is attached as Form G showing where the pages are to appear in a Franchise Disclosure Document.

¹ Adopted by the NASAA Membership May 19, 2019

Form G

[Sample]

FRANCHISE DISCLOSURE DOCUMENT



SUN VISION FRANCHISING, LLC
2018 Mercury Avenue, Suite 1600
Venus, Texas 77666
(214) 777-2222
harry.earth@sunvision.com
www.sun.com

As a SUN VISION® franchisee, you will sell solar power-related equipment, training and supplies primarily to small and medium-sized businesses.

The initial investment necessary to begin operation of a SUN VISION franchised business ranges from \$145,000 to \$350,000. This includes \$35,000 to \$100,000 that must be paid to the franchisor or its affiliates.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient to you. To discuss the availability of disclosures in different formats, contact Harry Earth at 2018 Mercury Avenue, Suite 1600, Venus, Texas 77666, (214) 777-2222, harry.earth@sunvision.com.

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: August 1, 2018

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit [].
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit [] includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only [XYZ] business in my area?	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What's it like to be [an XYZ] franchisee?	Item 20 or Exhibit [] lists current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

What You Need To Know About Franchising *Generally*

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit [].

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in [State]. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in [State] than in your own state.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

Body of Franchise Disclosure Document
Items 1-22

199110050

State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	Pending
Hawaii	May 17, 2020
Illinois	Pending
Indiana	May 20, 2020
Maryland	Pending
Michigan	May 10, 2020
Minnesota	May 23, 2020
New York	June 15, 2020
North Dakota	May 10, 2020
Rhode Island	May 11, 2020
South Dakota	May 10, 2020
Virginia	May 31, 2020
Washington	Pending
Wisconsin	May 9, 2020

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

Instructions for Preparing State Cover Sheets and State Effective Date Page

1. Insert the State Cover sheets immediately following the FTC required Cover Page described in Part VII.
2. Include the page titled “**How to Use This Franchise Disclosure Document**” as illustrated in the Sample in Form G.
 - a. Format the information on a single page, in at least 13 point type.
 - b. Use bold text only as illustrated in the Sample.
 - c. Do not add, modify, or delete any of the information in the Sample page, except as described below.
 - d. Insert the name of the franchise business where indicated in the first column, and the appropriate Exhibit letters or numbers from the franchisor’s Franchise Disclosure Document where indicated in the second column.
3. On the page immediately following “How to Use this Franchise Disclosure Document,” include the page titled “**What You Need to Know About Franchising *Generally***” as illustrated in the Sample in Form G.
 - a. Format the information on a single page, in at least 13 point type.
 - b. Use bold and underlined text only as illustrated in the Sample.
 - c. Do not add, modify, or delete any of the information in the Sample, except as described below.
 - d. Insert the appropriate Exhibit letter or number from the franchisor’s Franchise Disclosure Document where indicated in the second to last paragraph.
4. On the page immediately following “What You Need to Know About Franchising Generally” include the page titled “**Special Risk(s) to Consider About *This* Franchise**” as illustrated in the Sample in Form G.
 - a. Unless otherwise directed to do so by a state, include this information on a single page, in at least 13 point type.
 - b. If a franchisor requires any dispute resolution outside of a franchisee’s home state, include the risk factor captioned Out-of-State Dispute Resolution, conforming the disclosure to the franchisor’s requirements and inserting the applicable state or jurisdiction.
 - c. Include additional risk factors if required by a state.
 - d. Do not add, modify, or delete any risk factor unless specifically directed to do so by a state.

- e. Number all risk factors if more than one risk factor is required.
 - f. Disclose any other risk factor or factors required by a State on the same page, unless the state allows the risk factor or factors to appear on a separate State Addendum under a heading captioned "Special Risk(s) to Consider About This Franchise."
 - g. A risk factor may be allowed to appear on a State Addendum if it is state-specific, if it required by only a single state, or if different states insist on different wording for substantially the same risk factor.
 - h. A state required risk factor may include a short caption with the subject of the risk. If so, follow the format illustrated in the Sample, using bold and underlining for the caption only.
 - i. Do not use ALL CAPS, multiple fonts, bold face, or underlining of the text of a risk factor, unless specifically directed to do so by a state.
 - j. If any risk factors appear in a State Addendum, include the following statement at the end of the page titled Special Risk(s) to Consider About This Franchise: Certain states may require other risks to be highlighted. If so, check the "State Specific Addenda" pages for your state.
5. Insert a page titled **State Effective Dates** immediately before the acknowledgement of receipt pages required under Item 23 of Part VII.
- a. Use the format illustrated in the Sample in Form G.
 - b. If a franchisor is filing for registration in only one state, the franchisor may insert the state effective date information on the same page as the Special Risks to Consider About This Franchise page, if the information will fit on a single page with text not less than 13 point type.
 - c. List an effective date or pending only for those states where a franchise registration, filing, or exemption application has been made or is pending.
 - d. Regional franchisors may add a statement to the State Effective Date page that their territory is limited to a specific state or states.
 - e. As registrations are ordered and made effective, the State Effective Date page can be modified by the franchisor without any refiling or amendment applications with the states.

**STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL
FRANCHISING
2019 Franchise Rules**

21VAC5-110-55. The Franchise Disclosure Document.

A. Format. The Franchise Disclosure Document must be prepared in accordance with §§ 436.3-436.5 of the Federal Trade Commission Franchise Rule (16 CFR 436.3-436.5), subject to the modifications set forth in subsections B and C of this section.

B. Financial statements. Notwithstanding § 436.5(u)(2) of the Federal Trade Commission Franchise Rule (16 CFR 436.5), a start-up franchisor in its first partial or full fiscal year selling franchises shall provide an opening balance sheet that has been audited by an independent certified public accountant using generally accepted United States auditing standards.

C. State cover page sheets and effective dates page. The Franchise Disclosure Document shall include the ~~following state cover page prepared in accordance with this subsection, which must immediately follow the Federal Trade Commission required cover page:~~

~~1. State the following legend:~~

~~STATE COVER PAGE~~

~~Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.~~

~~Call the state franchise administrator listed in Exhibit ____ for information about the franchisor or about franchising in your state.~~

2. ~~State the following:~~

~~MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.~~

3. ~~If any of the following apply, state the following, using capital letters as shown:~~

~~Please consider the following RISK FACTORS before you buy this franchise:~~

~~THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY [LITIGATION/ARBITRATION/MEDIATION] ONLY IN [STATE]. OUT OF STATE [LITIGATION/ARBITRATION/MEDIATION] MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO [LITIGATE/ARBITRATE/MEDIATE] WITH US IN [STATE] THAN IN YOUR OWN STATE. THE FRANCHISE AGREEMENT STATES THAT [STATE] LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.~~

4. ~~In addition to the above, disclose other risk factors required by the state administrator.~~

5. ~~If one or more risk factors applies, also state:~~

~~THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.~~

6. ~~If you use the services of a franchise broker or referral source, state the following:~~

~~We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.~~

7. State the following:

Effective Date:

a. ~~Leave the effective date blank until notified of effectiveness by the state administrator.~~

b. ~~If an applicant is using a multistate disclosure document, the applicant may list multiple state effective dates together on a separate page that is to be inserted immediately following the state cover page. state cover sheets and state effective dates page prepared in accordance with the requirements set forth in Part III B of the North American Securities Administrators Association, Inc. 2008 Franchise Registration and Disclosure Guidelines, as adopted May 19, 2019.~~